

STAMP AND RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

FILED/ACCEPTED

In the Matter of

EchoStar Technologies L.L.C.

Petition for Waiver of Section 15.117 of the
 Commission's Rules
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Federal Communications Commission
 Office of the Secretary**PETITION FOR WAIVER**

Pursuant to Section 1.3 of the Commission's rules, EchoStar Technologies L.L.C. ("EchoStar") respectfully requests a waiver of the "all channels" requirement in Section 15.117(b) of the Commission's Rules, 47 C.F.R. § 15.117(b), to permit the importation, marketing, and retail sale of two models of the Channel Master K77, high-definition ("HD"), Internet-enabled, digital video recorders ("DVRs") that can receive digital, over-the-air broadcast signals but do not include an analog broadcast tuner.¹ As discussed below, requiring an analog

¹ Section 15.117 provides, in relevant part, that "all broadcast receivers shipped in interstate commerce or imported into the United States, for sale or resale to the public ... [including] set-top devices that are intended to provide audio-video signals to a video monitor that incorporates the tuner portion of a TV broadcast receiver and ... can be used for off-the-air reception of TV broadcast signals ... shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service." The Media Bureau ("Bureau") and the Office of Engineering and Technology ("OET") have interpreted this provision to mean that any TV receiver that includes an over-the-air digital (ATSC) tuner must also include an over-the-air analog (NTSC) tuner. *See Dell Inc. and LG Electronics USA, Inc. Request for Waiver of Section 15.117 of the Commission's Rules*, MB Docket No. 10-111, Order, 25 FCC Rcd 9172, 9176 ¶ 2 (MB 2010) ("*Dell MO&O*"), citing Office of Engineering and Technology Laboratory Division Knowledge Database (available at <https://fjallfoss.fcc.gov/oetcf/kdb/index.cfm>), Publication Number 218634 (rel. Dec. 17, 2009) ("*OET Guidance*"). The All Channel Receiver Act, codified at 47 U.S.C. § 303(s), authorizes, but does not require, the Commission to impose the all-channel requirements in Section 15.117; thus, "the Commission may waive Section 15.117's

receiver for this equipment would lead to increased costs and other burdens that would make this over-the-air set top box less commercially viable, denying consumers access on a cost-effective basis to innovative technologies.

I. INTRODUCTION

Waiver of the analog broadcast tuner requirement for the two models of the Channel Master K77 described herein will provide consumers with access to a new, competitive cost-effective choice in an increasingly popular category of consumer entertainment devices, in a manner that will not frustrate the purpose of Section 15.117(b). Designed and manufactured by EchoStar, the Channel Master K77 device family² combines over-the-air television content with over-the-top functionality, making these boxes a perfect, economical choice for second televisions or for households that have “cut the cord.” The non-subscription boxes offer reception of digital HD broadcast signals using two ATSC tuners, enabling simultaneous watch-and-record functionality; something that is in demand in today’s marketplace. They also can connect to a consumer’s Internet service through Ethernet or using an optional Wi-Fi dongle, giving the user access to streamed, over-the-top content from providers such as Pandora and Netflix. All this functionality is packaged in a sleek, ultra-thin, energy-efficient form factor that can be used with a TV or monitor.

EchoStar has designed and developed these devices to receive TV signals using the ATSC standard, the digital standard employed for the vast majority of over-the-air video content

provisions regarding signal format reception capabilities for particular devices on public interest grounds.” *See Dell MO&O* ¶ 7.

² There currently are two variants of the K77 device. Model CM-7500GB16 is Flash memory-based with 16GB of memory, but no internal hard drive (“HDD”); an external USB hard drive can be added. Model CM-7500GB320 includes a 320 GB HDD.

consumers receive today.³ EchoStar has not included an NTSC tuner for technical, business, and practical reasons. Requiring EchoStar to do so would dramatically increase the device's cost, size, and energy consumption without any countervailing benefits to consumers. Moreover, full-power TV broadcast stations stopped broadcasting analog signals four years ago, and low-power TV ("LPTV") broadcast stations increasingly have been transitioning to digital and will cease analog transmissions altogether in approximately two years – well within the Channel Master K77 product lifecycle. Accordingly, the Bureau and/or OET should waive Section 15.117(b) with respect to this device. EchoStar respectfully requests that the Bureau and/or OET grant the waiver no later than September 1, 2013 in order to ensure EchoStar sufficient time to manufacture and import the Channel Master K77 before fall product line-ups in retail stores are solidified.

II. GRANT OF A WAIVER WILL DIRECTLY BENEFIT CONSUMERS WITH NO ADVERSE IMPACT

Waiver of Section 15.117 is appropriate in this case because "there are sound public policy reasons to waive compliance ..., and a waiver would not undermine the general policy served by the rule."⁴ A waiver grant will serve the public interest by affording consumers access to an innovative, non-subscription, cost-effective device with the sleek size and functionality

³ The Advanced Television Systems Committee ("ATSC") developed the digital television ("DTV") standard adopted by the FCC in 1996 and transitioned to by all full power television broadcasters in 2009. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fourth Report and Order, 11 FCC Rcd 17771 (1996). The ATSC DTV standard replaced the analog television standard established by the National Television System Committee ("NTSC"), and by September 1, 2015, all television broadcast transmissions will use the ATSC standard instead of the NTSC standard. *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10733, ¶ 2 (2011).

⁴ *Dell MO&O* ¶ 7 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

they want. Meanwhile, for the small fraction of LPTV stations continuing to operate only in analog, no consumer who watches these stations would be forced to purchase the Channel Master K77, and even a consumer who does purchase the device could use her TV for direct receipt of analog signals.

A. RETAIL SALE OF THE CHANNEL MASTER K77 WILL BENEFIT CONSUMER CHOICE IN PRODUCTS AND SERVICES

The Channel Master K77 models provide a new, innovative mix of broadcast, DVR, and over-the-top video functionality in an ultra-thin, premium quality package that reflects EchoStar's experience as a creative force in home entertainment. EchoStar has been designing and manufacturing innovative set-top boxes for the satellite industry for more than 25 years and has been serving the IP television ("IPTV") and cable set-top box markets for the past five. EchoStar's set-top innovations include advanced DVR and place-shifting technology, home networking integration, multi-room and multi-tuner capabilities, interactivity, and energy efficiency.⁵ The more than 17 million deployed pay-TV boxes manufactured by EchoStar are compatible with industry-leading technologies such as Digital Video Broadcasting ("DVB"), Wi-Fi, Bluetooth, Android, the Digital Living Network Alliance ("DLNA"), the High-Definition Multimedia Interface ("HDMI"), the Multimedia over Coax Alliance ("MoCA"), and the World Wide Web Consortium.⁶ This technology suite has enabled EchoStar to set the global standard

⁵ See EchoStar, Company Overview 20-21 (2013), *available at* http://www.echostar.com/~media/EchoStarWeb/Documents/Brochures/EchoStar_Corporate_Brochure.ashx.

⁶ See EchoStar, Company Overview 21 (2013), *available at* http://www.echostar.com/~media/EchoStarWeb/Documents/Brochures/EchoStar_Corporate_Brochure.ashx.

for hybrid IP/broadcast video delivery and connected device solutions.⁷ Many of the set-top boxes developed and manufactured by EchoStar – including the Channel Master K77 devices – can deliver third-party Internet-connected and interactive applications directly to consumers’ TV screens.⁸ In addition, EchoStar is one of the few manufacturers that provides devices to multichannel video programming distributors (“MVPDs”) for lease to their customers, develops and manufactures retail products for sale under other brand names (*e.g.*, Channel Master), and offers its own products for sale in retail establishments and online. In a competitive market, EchoStar ranks third in the world in set-top box market share.⁹

As a result of this diverse experience, EchoStar is well-positioned to develop and produce consumer equipment that merges different media delivery technologies into a single, convenient, cost-effective user-friendly package. This is clearly demonstrated in the Channel Master K77, which recognizes current consumer trends by combining over-the-air HDTV with over-the-top Internet video. The availability of the Channel Master K77 devices will promote cost-effective consumer choice in equipment by adding a new product to the marketplace, and also will promote consumer choice in services for individuals or households seeking a non-MVPD option with no subscription or monthly fee required. EchoStar plans to provide these devices to Channel Master in time for retail sale this fall, but will not be able to do so unless the Bureau and/or OET grant the requested waiver by September 1, 2013.

⁷ See EchoStar Investor Presentation 5 (January 2013), *available at* http://files.shareholder.com/downloads/SATS/2490032739x0x626296/06654AA8-683A-4F61-8245-D51CBC97C5C3/H49311_EchoStar_010413_final.pdf.

⁸ See EchoStar, Annual Report: Year End December 31, 2012 3, *available at* http://files.shareholder.com/downloads/SATS/2490032739x0x647260/9645D739-1AE8-4298-BB90-494B55C7A164/2013_SATS_Annual_Report_web.pdf.

⁹ ABI Research Set Top Box Market Shares Report, YE 2012, *available at* <http://www.abiresearch.com>.

B. AN ANALOG TUNER IS NOT DESIRABLE OR NECESSARY AS A PRACTICAL MATTER

One of the most compelling features of the Channel Master K77 – its ultra-thin design – is only possible through extreme economy in choice of components; with an analog tuner, these boxes would be far more bulky, less energy efficient, and less appealing to consumers.¹⁰ In addition, an analog tuner would add significantly to EchoStar's manufacturing costs and, ultimately, to the retail price. This includes certain non-recurring engineering costs, such as adding a board spin or creating a daughter card to support analog tuner circuitry, rerunning thermal calculations, and designing a new chassis. It also includes the added cost of materials on a per-unit basis, which alone could cost consumers from \$20-30 more per device. Designing a new, bulkier chassis to accommodate an analog tuner also would cost EchoStar in projected revenue, as one of the key selling features is intended to be the sleek form factor of the device in its current design.

Moreover, the absence of an analog tuner in this product will not have a negative impact on consumers. Today's world is almost all-digital, particularly in broadcasting. Full-power TV broadcast stations (which typically carry the most popular content) stopped broadcasting analog signals four years ago, in June 2009.¹¹ While LPTV, Class A, and TV translator stations were

¹⁰ As the Bureau previously has recognized, analog tuners add weight, bulk, and power consumption, and have increased computational needs, all of which would increase the cost and decrease the value to consumers of the K77 device. *See Dell MO&O* ¶ 16. Even if EchoStar were required to include an analog tuner, it would not be required to include the necessary circuitry to convert such signals to digital to allow for recording on the HDD or the Flash. Doing so would add even further to the cost, size, and power consumption of the device.

¹¹ *See, e.g., Pending Applications and Pleadings Related to Proceedings for New Analog Full-Power Television Stations for Communities in Several States*, Order, 26 FCC Rcd 14301, ¶ 1 (MB 2011). Consumers have fully embraced the digital transition: as of August 2009, 99.4 percent of U.S. households with television sets were equipped to receive digital television signals. 14th Video Competition Report, FCC 12-81 ¶ 161 (citing *The Digital Transition: Update on the Digital Readiness of U.S. Households*, Nielsen, Sept. 8, 2009, at 1. Nielsen

not required to transition to digital in 2009, many have done so voluntarily over the past several years. Indeed, even three years ago at the time the Dell waiver was granted, more than half of LPTV stations already had completed or begun their transition to digital.¹² Now, current Media Bureau numbers indicate that more than 60% of Class A, LPTV, and TV translator stations have fully converted to digital.¹³ More importantly, unlike the situation which existed at the time of the Dell waiver, a hard deadline has been established for all LPTV stations to complete their transition to digital.¹⁴ Thus, there is a continually shrinking pool of analog TV broadcasts, and after September 1, 2015, which is well within the product lifecycle of the Channel Master K77, there will cease to be even a hypothetical public benefit to requiring such devices to include an analog tuner. In the meantime, an analog tuner would impose costs over the device's entire lifespan, but at best could only offer very minor benefits for a very limited number of individuals over the next 30 months.

Along these same lines, the Commission also is considering a request by TiVo, Inc. ("TiVo") for waiver of Section 15.117 for a DVR device.¹⁵ The comment cycle has closed in

stopped tracking the readiness of U.S. television households after the digital transition was completed.).

¹² Dell Petition at n. 2 ("Based on an April 30, 2010 review of the FCC's Consolidated Database System (CDBS), more than half of the nation's LPTV stations have either commenced digital broadcasts or taken affirmative steps to do so - *i.e.*, have filed applications seeking authority to operate digitally or have received permits authorizing digital operations.").

¹³ Hossein Hashemzadeh, NTA Seminar Presentation, May 2013, *available at* http://www.tvfmrtranslators.com/past_papers/2013/Hossein%20Hashemzadeh%20FCC%20Media%20Bureau%20Update%202013.pdf (visited June 7, 2013).

¹⁴ *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10733 ¶ 2 (2011).

¹⁵ *See TiVo Inc. Petition for Waiver of Sections 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d) of the Commission's Rules*, MB Docket No. 11-105, at 6 (filed Feb. 4, 2013).

that proceeding, and TiVo's request is unopposed. This is not surprising, given the lack of a policy justification for continued imposition of an analog tuner mandate. EchoStar supports TiVo's request, and notes that to the extent the Bureau grants TiVo's request, the Commission should likewise grant EchoStar's waiver request in order to ensure a level playing field for competitive set-top box devices.

C. GRANTING A WAIVER FOR THE CHANNEL MASTER K77 WILL NOT UNDERMINE CONSUMERS' ABILITY TO ACCESS ANALOG BROADCASTS, SHOULD THEY SO DESIRE

Granting the requested waiver will not undermine the purpose of Section 15.117 to ensure that consumers can access equipment that receives all broadcast television channels. As the Bureau previously has explained, Section 15.117 was "initially adopted to ensure that analog televisions could receive UHF channels," and was updated in 2002 to ensure that consumer equipment could access the established digital television channels.¹⁶ In part because of Section 15.117, consumers today have plentiful, nearly ubiquitous access to devices that can receive analog TV signals. For example, every TV receiver in the U.S. today has an analog tuner which consumers can use at any time to access over the air the small number of analog television stations that may be available in their area. In any event, the consumers most likely to purchase the Channel Master K77 devices are well-informed and technically knowledgeable. They are likely looking for premium HD digital broadcast signals and therefore are unlikely to be misled or disappointed by the digital-only functionality of the devices. Consumers who desire analog TV receiver functionality have other choices in the marketplace.

TiVo also is seeking waiver of Section 15.118(b) of the Commission's rules regarding analog cable tuners.

¹⁶ *Dell MO&O* ¶ 2. Section 15.117 primarily has been used to ensure that consumer equipment includes functionality to access new channels and formats. While mandating inclusion of analog tuners in all television receivers may have been justified several years ago, it is an increasingly difficult interpretation to sustain, given the current phase-out of all analog broadcasting.

III. CONCLUSION

For the foregoing reasons, EchoStar respectfully urges the Commission to waive the Section 15.117 analog tuner requirement for the Channel Master K77 models of HD ATSC receivers described herein. EchoStar requests that this Petition be placed on public notice as quickly as possible and that the Bureau and/or OET grant the requested waiver no later than September 1, 2013, before fall product line-ups in retail stores are finalized. This time frame will ensure that consumers have the option to purchase these sleek, innovative, non-subscription DVRs as soon as possible.

Respectfully submitted,

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